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Boudreau v. Wendell Order Dckt. 35077

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In the Supreme Court of the State of Idaho

CAROL A. BOUDREAU,

Plaintiff-Appellant.

v.

CITY OF WENDELL, DON BUNN, RICK
COWEN, RICK HOUSER, JASON HOUSER,
ILENE ROUNSEFELL, REX STRICKLAND,

Defendants-Respondents.

LAW CLERK

ORDER GRANTING MOTION TO
AUGMENT

Supreme Court Docket No. 35077-2008
Gooding County District Court No.
2007-607

A MOTION TO AUGMENT with attachments was filed by counsel for Respondents on November 24, 2008. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Respondents' MOTION TO AUGMENT be, and hereby is, GRANTED and the augmentation record shall include the documents listed below, file stamped copies of which accompanied this Motion:

1. Affidavit of Mickey Walker in Support of Defendants' Motion to Dismiss, or, in the alternative, Motion for Summary Judgment, file stamped October 24, 2007; and
2. Defendants' Motion to Strike Portions of Affidavit of Carol A. Boudreau in Opposition to Defendant's Motion for Summary Judgment, file stamped December 11, 2007.

DATED this 9th day of January 2009.

For the Supreme Court


Stephen W. Kenyon, Clerk

cc: Counsel of Record

AUGMENTATION RECORD

Entered on ATS
By: Kg.

In the Supreme Court of the State of Idaho

CAROL A. BOUDREAU,

Plaintiff-Appellant.

v.

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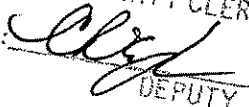
Entered on ATS
By: Kg

JAMES J. DAVIS
Attorney at Law
406 W. Franklin St.
P. O. Box 1517
Boise, ID 83701-1517
Telephone: (208) 336-3244
Facsimile: (208) 336-3374
Email: jdavis@davisjd.com
ISB# 2185

Attorney for Defendants City of Wendell,
Rex L. Strickland, Ilene Rounsefell,
Rick Cowen, Don Bunn, and Jason Houser

DISTRICT COURT
GOODING CO. IDAHO
FILED

2007 OCT 24 AM 9:08

GOODING COUNTY CLERK
BY:  DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

CAROL A. BOUDREAU,

Plaintiff,

v.

CITY OF WENDELL, a Political
Subdivision of the State of Idaho, and
an incorporated municipality; and
REX L. STRICKLAND, Mayor; ILENE
ROUNSEFELL, Council President;
RICK COWEN, Councilman; DON
BUNN, Councilman; and JASON
HOUSER, Councilman, Individually and
in their official capacity, and DOES
I-X,

Defendants,

Case No. CV 2007-607

AFFIDAVIT OF MICKEY WALKER
IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS,
OR, IN THE ALTERNATIVE, MOTION
FOR SUMMARY JUDGMENT

STATE OF IDAHO)
 : ss.
County of Gooding)

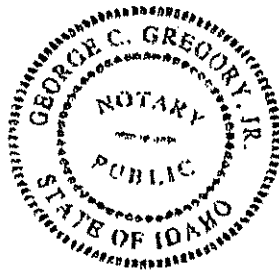
MICKEY WALKER, being first duly sworn, deposes and states as follows:


1. I am the duly-appointed Treasurer of the City of Wendell and I also am the currently-acting City Clerk of the City of Wendell.
2. Attached hereto as Exhibit A is a true and correct copy of the Minutes of a special city council meeting held on August 29, 2007. As the acting City Clerk, I was present during the meeting, I prepared the attached Minutes, and I am a custodian of the Minutes. The Minutes record the acts and events that took place at the time of the special city council meeting; the Minutes are kept in the course of the regularly-conducted business activity of the City of Wendell; and it is the regular practice of the City of Wendell to prepare Minutes of city council meetings.
3. As stated in the Minutes, and as I personally observed at the time, the vote by the city council to remove Carol Boudreau as City Clerk was unanimous.

DATED this 19th day of October, 2007.


MICKEY WALKER

SUBSCRIBED AND SWORN to before me this ____ day of October, 2007.




Notary Public for Idaho
Residing at: Gooding
Commission expires: 3-30-2012

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 23rd day of October, 2007, I served a true and correct copy of the foregoing AFFIDAVIT OF MICKEY WALKER IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS, OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT upon the following attorneys by depositing a copy thereof in the United States Mail, postage prepaid, in an envelope addressed to said attorneys at the following address:

Greg J. Fuller
Daniel S. Brown
Fuller Law Offices
161 Main Ave. W.
P. O. Box L
Twin Falls, ID 83301



JAMES J. DAVIS

Council Meeting – Budget
Wednesday, August 29, 2007
7:30 a.m.

Mayor Rex Strickland called the Wendell City Council budget meeting to order at 7:30 a.m. In attendance at the meeting were **Council Members Don Bunn, Rick Cowen** and **Ilene Rounsefell**. **Council member Jason Houser** arrived after the meeting was called to order. Also present was **Public Works Director Pat Munyan** and **Mickey Walker, Treasurer/ acting Clerk**.

TREASURER:

Walker asked the council for 15 or 20 minutes to finish the general fund portion of the budget for presentation.

Cowen motioned to go into executive session for personnel issues, Title 67-2345 1b. **Bunn** seconded the motion. A roll call vote was taken with all council in favor.

Following the executive session, with no decisions made, council members discussed the library's budget and personnel matters,

There was also discussion regarding the annexation of properties that are receiving city services, not yet annexed into the city proper. **Bunn** commented there are also citizens who have asked to be annexed so they can receive city services such as Jerry Alan.

Bunn asked about the building department budget and if a portion of Shelly Harral's salary would be coming out of that department. **Walker** answered it would be taken out.

If calculations prove that a revenue overage is correct, council recommended adding an additional \$5,000 to the fire department's budget line for the truck reserve. Cowen also reemphasized the need to take the drug trust out of the police department line items and set in its own department.

(**Houser** arrived.)

Discussion focused on prior year's SIRCOM charges and how the council wanted to deal with the matter. It was decided, following a suggestion from **Rounsefell**, that the city pay its annual amount plus half of a prior years charge. The two lines will be kept separate in the police department's budget.

Munyan asked the council to consider having the 160 acres, by the transfer station, appraised. The possibility of having some of the acres developed into a golf course, airport, housing development or an industrial park was some of the options were covered.

EXHIBIT A

Bunn motioned to go into executive session for personnel issues. **Cowen** seconded. **Mayor Strickland** citing Title 76-2345 1b, called for a roll call vote, all in favor.

Following the return from executive session **Mayor Strickland** stated no decisions were made.

Cowen made a motion to un-appoint and terminate employment of Carol Boudreau, City Clerk for the City of Wendell. **Houser** seconded the motion. **Mayor Strickland** asked for a roll with all members voting in favor of the motion.

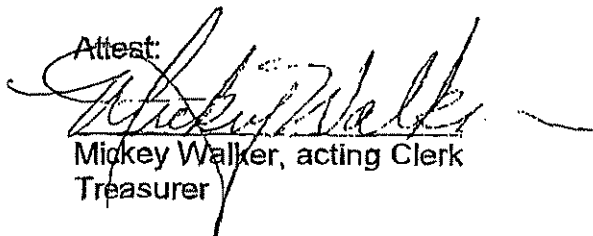
A meeting was set for 5 p.m. the following day for a final budget work session, prior to the public hearing.

There being no further business, upon a motion duly made and seconded, the meeting adjourned.



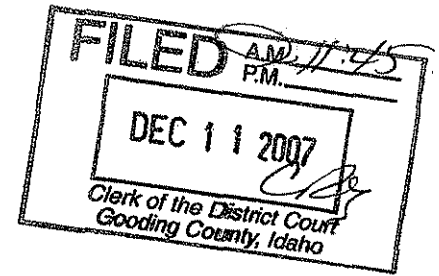
Rex Strickland, Mayor

Attest:



Mickey Walker, acting Clerk
Treasurer

JAMES J. DAVIS
Attorney at Law
406 W. Franklin St.
P. O. Box 1517
Boise, ID 83701-1517
Telephone: (208) 336-3244
Facsimile: (208) 336-3374
Email: jdavis@davisjd.com
ISB# 2185



Attorney for Defendants City of Wendell,
Rex L. Strickland, Ilene Rounsefell,
Rick Cowen, Don Bunn, and Jason Houser

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

CAROL A. BOUDREAU,

Plaintiff,

v.

CITY OF WENDELL, a Political
Subdivision of the State of Idaho, and
an incorporated municipality; and
REX L. STRICKLAND, Mayor; ILENE
ROUNSEFELL, Council President;
RICK COWEN, Councilman; DON
BUNN, Councilman; and JASON
HOUSER, Councilman, Individually and
in their official capacity, and DOES
I-X,

Defendants,

Case No. CV 2007-607


DEFENDANTS' MOTION TO STRIKE
PORTIONS OF AFFIDAVIT OF
CAROL A. BOUDREAU IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

COME NOW Defendants City of Wendell, Rex L. Strickland, Ilene Rounsefell, Rick Cowen, Don Bunn, and Jason Houser, by and through their attorney of record, James J. Davis, pursuant to Idaho Rules of Civil Procedure, Rule 12(f), and Rule 56(e), and Idaho Rules of Evidence, Rule 103(a)(1), and move this Court to strike portions of the Affidavit of Carol A. Boudreau in Opposition to Defendant's Motion for Summary Judgment. This Motion is made and based upon the Memorandum in Support of Defendants' Motion to Strike Portions of Affidavit of Carol A. Boudreau in Opposition to Defendant's Motion for Summary Judgment filed contemporaneously herewith, together with other authorities which may hereafter be filed.

The Affidavit of Carol A. Boudreau in Opposition to Defendant's Motion for Summary Judgment is attached hereto as Exhibit A. For the convenience of the Court and counsel, the portions of the Affidavit which Defendants seek to strike are underlined. In addition, the bases upon which the material should be stricken is identified in the margin of the Affidavit.

ORAL ARGUMENT IS REQUESTED.

DATED this 11th day of December, 2007.



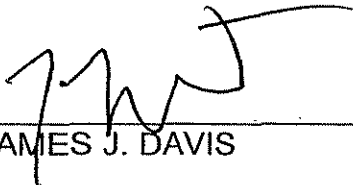
JAMES J. DAVIS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of December, 2007, I transmitted the foregoing DEFENDANTS' MOTION TO STRIKE PORTIONS OF AFFIDAVIT OF CAROL A. BOUDREAU IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT to the office of the Clerk of the District Court at the Gooding County Courthouse via facsimile.

I FURTHER HEREBY CERTIFY that on the 11th day of December, 2007, I served a true and correct copy of the foregoing DEFENDANTS' MOTION TO STRIKE PORTIONS OF AFFIDAVIT OF CAROL A. BOUDREAU IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT upon the following attorneys by transmitting a copy thereof to said attorneys via facsimile:

Greg J. Fuller
Daniel S. Brown
Fuller Law Offices
161 Main Ave. W.
P. O. Box L
Twin Falls, ID 83301



JAMES J. DAVIS

COPY

000006

Greg J. Fuller
Daniel S. Brown
FULLER LAW OFFICES
Attorneys at Law
161 Main Avenue West
P. O. Box L
Twin Falls, ID 83301
Telephone: (208) 734-1602
Facsimile: (208) 734-1606
ISB #1442
ISB #7538

Attorneys for Plaintiff

RECEIVED
DEC - 4 2007
JAMES J. DAVIS

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

CAROL A. BOUDREAU,

Plaintiff,

vs.

CITY OF WENDELL, a Political
Subdivision of the State of Idaho, and
an incorporated municipality; and
REX L. STRICKLAND, Mayor; ILENE
ROUNSEFELL, Council President;
RICK COWEN, Councilman; DON BUNN,
Councilman; and JASON HOUSER,
Councilman, Individually and in their
official capacity, and DOES 1-X,

Defendants.

Case No. CV-2007-607

AFFIDAVIT OF
CAROL A. BOUDREAU IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

AFFIDAVIT - 1

EXHIBIT A

STATE OF IDAHO)
 : ss
County of Twin Falls)

1. I am the Plaintiff in the above-entitled matter and I make this Affidavit based upon my own personal knowledge and belief.

Legal Concl
Lay opinio
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11
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Evidence
Rule

Best
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Rule.

only, implying that the requirements contained therein are enforceable.

5. Immediately upon being hired as the City Clerk for the City of Wendell, I entered into the performance of the contract of employment and duly performed all of the conditions on my part to be performed until I was prevented from doing so by the act of my termination. Legal Council
Lay Opin
Lack of
Found

6. Prior to December, 2006, I had not been subject to any disciplinary action by the City of Wendell.

7. During the course of my employment with the City of Wendell, and up until December, 2006, I received numerous promotions and pay raises and various and sundry other accolades.

8. On or about the 1st day of February, 2007, I was presented with a written Reprimand, a copy of which is attached hereto as if fully incorporated by its reference as Plaintiff's Exhibit "A", from the Defendant, Mayor, Rex L. Strickland, for allegedly violating certain terms and conditions of the Personnel Manual.

9. On the 9th day of August, 2007, I received from the Defendant, Mayor, Rex L. Strickland, a Notice of Proposed Personnel Action-Termination and Notice of Suspension with Pay Pending Decision, a copy of which is attached hereto and is fully incorporated by its reference as Plaintiff's Exhibit "B".

10. Finally, on the 29th day of August, 2007, I received from the Defendant, Mayor, Rex L. Strickland, a written Notice of Decision Regarding Pending Personnel Action – Termination/Unappointment, a copy of which is attached hereto as if fully incorporated by its reference as Plaintiff's Exhibit "D". The written Notice of Decision Regarding Pending

Personnel Action – Termination/Unappointment effectively terminated my employment with the City of Wendell.

11. The above-described actions on the part of the Defendant, Mayor, Rex L. Strickland, and on behalf of the City of Wendell and City Council, were without just cause, and ^{Legal Conclusion} ^{Long opinion} ^{Lack of} ^{Found}
in violation of the Disciplinary Procedures set out in the Personnel Manual of the City of Wendell for the following reasons:

a) None of the allegations elicited in the above-described documents, i.e., the “
written Reprimand, the Notice of Proposed Personnel Action-Termination and Notice of
Suspension with Pay Pending Decision, and the Notice of Decision Regarding Pending
Personnel Action – Termination/Unappointment, have any basis in fact.”

b) I was never provided an opportunity to present evidence and to rebut the
information upon which my charges of misconduct and inadequate performance was based, in
violation of those requirements set out in the Personnel Manual, more specifically, paragraph 4, “
page 27-28, entitled “Appeal hearing”. (Please see Plaintiff’s Exhibit “C” attached hereto and
incorporated herein by reference.)”

12. The promises set forth in the Appeal Hearing portion of the Personnel Manual “
forms a basis for contractual liability in this matter.”

13. My termination was therefore without just cause and in violation of my rights to “
due process under the City of Wendell’s Personnel Manual, and therefore without merit and
illegal, and further amounted to a breach of the employment contract between myself and
Defendants.”

FURTHER Your Affiant sayeth naught.

DATED This 3rd day of December, 2007.

Carol Boudreau
CAROL BOUDREAU
Plaintiff

SUBSCRIBED AND SWORN To before me this 3rd day of December, 2007.

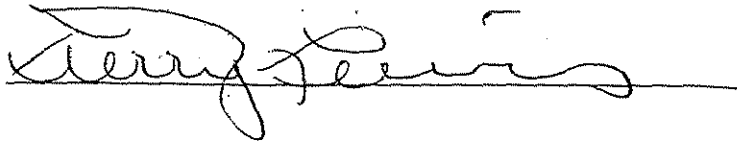


Terry Lewis
Notary for State of Idaho
Residing at TWIN FALLS
Commission Expires 01-22-13

CERTIFICATE OF MAILING AND FACSIMILE

I, the undersigned, hereby certify that on the 3rd day of December, 2007, a true and correct copy of the foregoing was mailed, United States Mail, postage prepaid, and transmitted, via facsimile, to the following:

James J. Davis
Attorney at Law
P.O. Box 1517
Boise, ID 83701-1517
(208) 336-3374

A handwritten signature in cursive script, appearing to read "Terry Lewis", is written over a horizontal line.